

Judge:
Chapter: 13
Hearing Date: July 29, 2010
Hearing Time: 9:30 a.m.
Hearing Location:
Judge's Courtroom
700 Stewart St #7106
Seattle, WA 98101
Response Date: July 22, 2010

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT SEATTLE

In re:

MICHAEL REID MOI,

Debtor.

IN CHAPTER 13 PROCEEDING
NO. 10-15781-KAO

OBJECTION TO CONFIRMATION
OF PLAN AND MOTION TO
DISMISS CASE

K. Michael Fitzgerald, Chapter 13 Trustee, objects to the confirmation of the debtor's Chapter 13 plan and moves to dismiss the debtor's Chapter 13 case. In support of his Objection and Motion, the Trustee states as follows:

This case was filed on 5/20/10. It is not eligible for Chapter 13. The debtors are beyond the unsecured debt limit allowable for Chapter 13 participation and the case should accordingly be dismissed. Only an individual that owes, on the date of the filing of the petition, noncontingent, liquidated, unsecured debts of less than \$360,475.00 may be a debtor under Chapter 13. 11 U.S.C. § 109(e).

“[D]etermining Chapter 13 eligibility under § 109(e) . . . should normally be determined by the debtor’s originally filed schedules, checking only to see if the schedules were made in good faith.” Scovis v. Henrichsen (In re Scovis), 249 F.3d 975, 982 (9th Cir. 2001). In addition, “ordinary events occurring subsequent to the filing (e.g., paying down debt) do not affect the eligibility determination.” Id. at 984. “[T]he unsecured portion of undersecured debt is counted as unsecured for § 109(e) eligibility purposes.” Id. at 983. Disputed debt is to be considered when calculating the total for eligibility purposes. In Re Nichols, 184 BR 82, (9th Cir BAP 1995).

OBJECTION TO CONFIRMATION
AND MOTION TO DISMISS - 1

Chapter 13 Trustee
600 University St. #2200
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1 Here, the debtor's schedule F reflects \$942,776.94 in unsecured or undersecured debt.
2 Notwithstanding the debtor's claims of \$99,094 in "disputed" debt, the eligibility limit has been
3 far surpassed. Therefore, the debtor's schedules display unsecured debts which exceed the
4 eligibility limit referenced herein and the case should promptly be dismissed.

5 The debtor has also failed to timely provide his tax return which evokes an additional
6 dismissal request. A debtor is required to provide a copy of the debtor's most recently filed
7 federal income tax return (Local Bankruptcy Form 13-2, 521; Interim Fed. R. Bankr. P. 4002(b);
8 Local R. Bankr. P. 4002-1; Local R. Bankr. P. 3015-1(e). If a debtor fails to provide the most
9 recently filed federal income tax return not later than seven days before the date first set for
10 meeting of creditors, the debtor's case must be dismissed unless the debtor demonstrates that the
11 failure to so comply is due to circumstances beyond the control of the debtor. 11 U.S.C. §
12 521(e)(2).

13 The debtor's meeting of creditors was originally scheduled for June 28, 2010, yet the
14 **Error! Reference source not found.** failed to provide the Trustee the most recently filed federal
15 tax return. Based on the debtor's failure to provide this documentation, the Trustee requests that
16 the debtor's case be dismissed.

17 In the event debtor's plan payments become delinquent after the date this objection and
18 motion are filed, the Chapter 13 Trustee also objects to confirmation and moves to dismiss this
19 case based on debtor's plan payment delinquency.

20 The Trustee reserves the right to assert additional bases for his Objection and Motion.

21 A proposed Order on this Objection and Motion is attached and incorporated.

22 WHEREFORE, the Chapter 13 Trustee requests that the Court enter an Order denying
23 confirmation of the debtor's Chapter 13 plan and dismissing the debtor's Chapter 13 case.

24 Dated this 28th day of June, 2010

25
26 /s/ Scott Crawford, WSBA #34978 for
27 K. MICHAEL FITZGERALD
28 Chapter 13 Trustee